

Chapter 13

Exercise of passport rights by UK firms



13.7 Changes to cross border services

- 13.7.1** G
- (1) Where a *UK firm* is exercising an *EEA right* under the *UCITS Directive*, *MiFID*, the *Insurance Directives*, *AIFMD* or the *IDD* and is providing *cross border services* into another *EEA State*, any changes to the details of the services are governed by the *EEA Passport Rights Regulations*.
 - (2) References to regulations in this section are to the *EEA Passport Rights Regulations*.
 - (3) (a) A *UK firm* which is not an *authorised person* should note that contravention of the prohibition imposed by regulation 12(1), 12A(1) or 16(1) is an offence.
 (b) It is a defence, however, for the *UK firm* to show that it took all reasonable precautions and exercised due diligence to avoid committing the offence.
 - (4) Where a *UK MiFID investment firm* exercises an *EEA right* under *MiFID* to provide *cross border services*, any changes to the details of the services are also governed by *MiFID RTS 3A* and *MiFID ITS 4A*.

- 13.7.2** G *UK firms* should also note that changes to the details of *cross border services* may lead to changes to the *applicable provisions* to which the *UK firm* is subject.

Firms passporting under the UCITS Directive

- 13.7.3** G If a *UK firm* is passporting under the *UCITS Directive*, regulation 12(1) states that the *UK firm* must not make a change in its programme of operations, or the activities to be carried on under its *EEA right*, unless the relevant requirements in regulation 12(2) have been complied with. These requirements are:
- (1) the *UK firm* has given a notice to the *FCA* and to the *Host State regulator* stating the details of the proposed change; or
 - (2) if the change arises as a result of circumstances beyond the *UK firm's* control, the *UK firm* has as soon as practicable (whether before or after the change) given a notice to the *FCA* and to the *Host State regulator*, stating the details of the change.

Standard forms are available from the FCA authorisations team (see ■ SUP 13.12 (Sources of further information)) to give the notices to the FCA referred to in ■ SUP 13.7.3 G (1) and ■ SUP 13.7.3A G.

Firms passporting under MiFID

- 13.7.3A** **G** If a *UK firm* is providing *cross border services* in a particular *EEA State* in exercise of an *EEA right* deriving from *MiFID*, the *UK firm* must comply with the requirements of regulation 12A(2) before it makes a change to its programme of operations, including:
- (1) changing the activities to be carried on in exercise of that *EEA right*;
 - (2) using, for the first time, any *tied agent* to provide services in the territory of that *EEA State*; or
 - (3) ceasing to use any *tied agent* to provide services in the territory of that *EEA State*.
- 13.7.3B** **G** The requirements of regulation 12A(2) are that:
- (1) the *UK firm* has given notice to the *appropriate UK regulator* stating the details of the proposed change; and
 - (2) the period of one *month* beginning with the day on which the *UK firm* gave the notice mentioned in (1) has elapsed.
- 13.7.3C** **G** A *UK MiFID investment firm* is also required to notify the FCA of any changes to the information in its *investment services and activities passport notification*, including changes relating to a *UK tied agent*, in accordance with:
- (1) article 4 (Information to be notified concerning the change of investment services and activities particulars) of *MiFID RTS 3A*; and
 - (2) article 7 (Submission of the change of investment services and activities particulars notification) of *MiFID ITS 4A*.
- 13.7.3D** **G**
- (1) If any of the details in an *investment services and activities passport notification* change, a *UK MiFID investment firm* is required to notify the FCA by completing the form in Annex I of *MiFID ITS 4A*.
 [Note: article 7(1) of *MiFID ITS 4A*]
 - (2) When communicating a change to *investment services and/or activities, ancillary services or financial instruments*, the *firm* is required to list all:
 - (a) the *investment services and/or activities* and *ancillary services* that it currently provides or intends to provide in the future; and
 - (b) the *financial instruments* that are relevant to those activities and services.

13.7.3E G If any of the details in the notification for the provision of arrangements to facilitate access to an *MTF* or an *OTF* change, the investment firm operating the *MTF* or the *OTF* is required to notify the *FCA* by completing the form in Annex IV of *MiFID ITS 4A*.

[Note: article 11(1) of *MiFID ITS 4A*]

- 13.7.3F** G
- (1) Each of the forms in *MiFID ITS 4A* referred to in ■ SUP 13.7.3DG and ■ SUP 13.7.3EG is replicated in ■ SUP 13 Annex 2R.
 - (2) These versions should be used for the purposes of notifications to the *FCA*.
 - (3) The forms should be submitted in accordance with ■ SUP 13.8.1R.

Termination of an investment services and activities passport

- 13.7.3G** G A *UK MiFID investment firm* should use the relevant form in ■ SUP 13 Annex 2AR to notify the *FCA* that it intends to:
- (1) change its programme of operations by ceasing to provide *cross border services*; or
 - (2) change its programme of operations by ceasing to provide *cross border services* through a *tied agent* established in the *UK*; or
 - (3) terminate in the territory of an *EEA State*, the provision of arrangements to facilitate access to, and trading on, an *MTF* or *OTF* by remote users, members or participants established in that *EEA State*.

Standard electronic forms

13.7.6A G For further details on giving the notices to the *appropriate UK regulator*, as described in ■ SUP 13.7.3 G (1), ■ SUP 13.7.3AG and ■ SUP 13.7.3BG, *UK firms* may wish to use the standard electronic form available from the *FCA* and *PRA* authorisation teams (see ■ SUP 13.12 (Sources of further information)).

13.7.7A G [deleted]

Firms passporting under the CRD

13.7.11 G A *UK firm* providing *cross border services* under the *CRD* is not required to supply a change to the details of *cross border services* notice.

Firms passporting under the IDD

- 13.7.11A** G
- (1) A *UK firm* which has exercised an *EEA right* under the *IDD* to provide a *cross border service* must not make any material change to the *relevant details* unless it has satisfied the requirements in regulation 17(C)(2).
 - (2) The requirements in regulation 17(C)(2) are that:

- (a) the *UK firm* has given a notice to the *appropriate UK regulator* stating the details of the proposed change; and
- (b) the period of one *month*, beginning with the date on which the *UK firm* gave the notice, has elapsed.

Liaison between regulators

- 13.7.13A G Where the *PRA* is the *appropriate UK regulator*, it will consult the *FCA* before deciding whether to give consent to a change (or proposed change) and where the *FCA* is the *appropriate UK regulator*, it will consult the *PRA* before deciding whether to give consent in relation to a *UK firm* whose immediate group includes a *PRA-authorized person*.

Firms passporting under AIFMD

- 13.7.13B G If a *UK firm* has exercised an *EEA right* under *AIFMD* to provide *cross-border services* to manage an *AIF*, regulation 17A(2) states that the *UK firm* must not make a material change to:

- (1) the programme of operations, or the *EEA* activities, to be carried out in exercise of that right; or
- (2) the *EEA States* in which it manages *AIFs*; or
- (3) the identity of the *AIFs* it manages in those *EEA States*;

unless the *UK firm* complies with the relevant requirements in regulation 17A(4) for a planned change or regulation 17A(5) for an unplanned change (see ■ SUP 13.6.9CG (2) and ■ SUP 13.6.9CG (3)).

- 13.7.14 G If a *UK firm* has exercised an *EEA right* deriving from *AIFMD* to provide *cross-border services* to market an *AIF*, regulation 17A(3) states that it must not make a material change to any of the following:

- (1) the programme of operations identifying the *AIF* the *AIFM* intends to market and information on where the *AIF* is established;
- (2) the *AIF* rules or instruments of incorporation;
- (3) the *depository* of the *AIF*;
- (4) the description of, or information on, the *AIF* available to investors;
- (5) if the *AIF* is a *feeder AIF*, the jurisdiction where the *master AIF* is established;
- (6) any additional information referred to in ■ FUND 3.2.2 R (Prior disclosure of information to investors), for each *AIF* the *AIFM* intends to market;
- (7) the *EEA States* in which the *AIFM* intends to market the *units* or *shares* of the *AIF* to an investor that is a *professional client*; and
- (8) information about arrangements made for the *marketing* of the *AIF* and, where relevant, arrangements to prevent the *AIF* from being

marketed to an investor that is a *retail client*, including where the *AIFM* relies on the activities of independent entities to provide investment services for the *AIF*;

unless the *UK firm* complies with regulation 17A(4) for a planned change or regulation 17A(5) for an unplanned change (see ■ SUP 13.6.9CG (2) and ■ SUP 13.6.9CG (3)).

Firms passporting under the MCD

13.7.15

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- (1) A *UK firm* which has exercised an *EEA right* deriving from the *MCD* to provide a *cross border service*, must not make any material changes to the service unless it has complied with the requirements in regulation 17(B)(2).
- (2) The requirements in regulation 17(B)(2) are that;
 - (a) the *UK firm* has given notice to the *FCA* stating the details of the proposed change; and
 - (b) the period of one *month* has elapsed, beginning with the day on which the *UK firm* gave notice.
- (3) Paragraph (1) does not apply to a changes occasioned by circumstances beyond the control of the *UK firm*.